IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 592 of 2000
in
SPECIAL CIVIL APPLICATION No 8539 of 2000
with
CIVIL APPLICATION No 8578 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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DALAL GAURANG JITENDRA MINOR THRO' FATHER AND GUARDIAN
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 592 of 2000
MR DC DAVE for Appellant.
MS HARSHA DEWANI, AGP for Respondent No. 1-3
MR DIPAK R DAVE for Respondent No. 4

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision : 31/08/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. This Letters Patent Appeal is directed against the order dated 6.9.2000 passed by the Learned Single Judge in Special Civil Application No. 8539 of 2000 whereby the Special Civil Application is dismissed.

2. The appellant herein being a minor represented through his natural guardian (father) preferred the Special Civil Application as the original petitioner with the prayer that an appropriate writ, order or direction be issued against the respondents to accept his application form and to consider the same on merits for admission to the First Year Degree/Diploma in Engineering/Pharmacy and raised the following issue in the Special Civil Application:-

> "Is it permissible on the part of the Central Degree Admission Cell as well as the Directorate of Technical Education both legally and equitably speaking, to deny the consideration of the case of the Petitioner for admission to various colleges in the State of Gujarat in the discipline of Engineering and Pharmacy either at the level of degree or diploma for the academic year 2000-2001, on the solitary premise that the Petitioner has passed 12th Standard Examination in Science Stream by appearing at the supplementary examination undertaken by the Gujarat Secondary Education Board in the month of July, 2000, as opposed to passing the the said examination by appearing at the regular examination for the same undertaken by the Gujarat Secondary Education Board in the month of March, 2000."

3. The appellant had appeared at 12th Std. (Science Stream) Examination conducted by Gujarat Secondary Education Board in March 2000. He says that he was not in a position to appear in the subject of Biology in the said examination conducted by the Board in the month of March, 2000 and thereafter when the result was declared, he was declared to have failed at the said examination in one of the subjects i.e. Biology. It was also the case of the appellant that the Board had declared in the month of May 2000 that those students of 12th Std. (Science Stream) who have failed in one of the subjects at the

examination conducted in March 2000, a supplementary examination would be held in the month of July 2000 to see that the valuable academic year of such students is not spoiled if they succeed in the said examination. The appellant then appeared in the said supplementary examination in the subject of Biology on 10.7.2000. The result of the supplementary examination was declared on 26.7.2001 and he was declared successful. The appellant claims that he had obtained 60% marks in Science subjects and requested the Central Degree Admission Cell to accept the petitioner's application form for admission to various colleges at the level of either degree/diploma in the courses of Engineering/Pharmacy in the year 2000-2001. However, the said request was turned down on the ground that whereas he has passed the examination, by supplementary at late stage now his case could not be considered for admission for the academic year 2000-2001. The aforesaid decision was challenged through Special Civil Application and it was contended that the action of the respondents in not considering his application for admission as aforesaid runs counter to the decision rendered by this Court in similar facts and circumstances on 27.8.99 in Special Civil Application No. 5909 of 1999 & 5968 of 1999. It was also submitted that the supplementary examination was conducted for the first time by the Board in the year 1999 and at that time also, the Central Degree Admission Cell and the Directorate of Technical Education had declined to consider the cases of those candidates who had passed through the supplementary examination and when such action was challenged through SCA Nos. 5909 and 5968 of 1999, it was ruled by the Court that the candidates who had passed through the supplementary examination shall be entitled to secure admission in various disciplines in the same academic year without waiting for the next academic year to commence. The Special Civil Application was contested by the respondents and an affidavit in reply was filed under signatures of the Deputy Director, Technical Education. In the said reply a stand was taken that for academic year 2000-01 the admission to a degree/diploma in Engineering/Pharmacy courses are governed by the Government Resolution dated 1.5.2000. As per this Government resolution, the students who appeared in one subject in the supplementary examination are not eligible to admission to degree/diploma in Engineering/Pharmacy course for the academic year 2000-2001. It is also stated that the purpose of conducting these supplementary examinations was with a view to see that the academic year of the students failing in one subject is not spoiled. That did not mean that it was necessary to facilitate their admission to professional course because

of heir low rank. It was also stated that many students applied for rechecking of various papers which takes 6 to 8 weeks time for completion. The regular students who passed the 12th HSC Examination in March/April have to be considered for admission in professional courses well on time and the process of their admission could not wait till the results of supplementary examination is declared and therefore it was decided that the students passing through the supplementary examination shall not be eligible in the academic year 2000-01 and it was also submitted that for this academic year 2000-01 no application form was accepted from any of the failed candidates as against the factual position that said forms had been accepted for the year 1999-2000. It was also submitted that the decision to hold the supplementary examination was taken after declaration of Government Resolution dated 5.5.99 and it was mentioned in Part-II relating to the eligibility that students passing 12th HSC Science Stream in March/April or October/November in the said academic year were eligible for admission to professional course and therefore in Special Civil Application Nos.5909 and 5968 of 1999, the Court had granted relief to the students who had approached the Court because their applications had already been accepted and recorded under the qualified category. The registration under such category was eliminated altogether for the academic year 2000-2001. It was also stated that the admissions for the year 2000-2001 had already been delayed.

4. In the facts of the present case, it is found that the petitioner has passed supplementary Higher Secondary Examination Conducted on 10.7.2000, the result of which has been declared on 26.7.2000. The last date for submission of applications for admission to different professional courses was over and the last date for submission of the application forms was fixed on 1.6.2000 and by this time the process of submission and receiving the applications till the last date of 1.6.2000 was over. The present appellant had not filed any applications prior to 1.6.2000 and the merit list has already been prepared and published. The submission of the learned counsel for the appellant is that whether the application had been made or not, should not make any difference because in the Year 1999-2000, the applications had been made and those were not considered. This Court had directed the Central Degree Admission Cell to consider the cases of the petitioners of that case for admission in the professional courses and that so far as this Year 2000-2001 is concerned, the application itself could not

have been made because it was already held out that applications shall not be entertained as per the say of the respondents themselves. This argument does not appeal us for the simple reason that as a matter of fact the appellants had not even submitted their applications before 1.6.2000 as was the case for the Year 1999-2000 and for this Year 2000-2001 it was held out in advance that candidates who pass by supplementary shall not be eligible for professional courses in the Year 1999-2000 the candidates were held out be eligible, had applied on time and were registered in the qualified category Secondly, the idea for holding the supplementary examination to save the academic year of a student does not necessarily confer the right to pursue the professional course, meaning thereby that such student passing in the supplementary examination may follow their higher education in respective integrated courses and other courses. It does not necessarily imply that they are also to held the eligible for professional courses in face of the fact that for admission in the professional courses, the process starts with the declaration of main results, such professional courses have to be started well on time and the other already qualified candidates who desire to prosecute such professional courses cannot be made to wait till the results of supplementary examinations are declared. The academic year can be saved by following courses other than the professional courses also and no right to pursue the professional courses as such can be claimed by those who do not qualify on time. Those candidates who pass by supplementary examination may try their fate in next year for professional courses. They cannot enforce such a right through the Court. It may also be mentioned that the candidates who passed by supplementary examination do avail a further chance to clear the said examination and, therefore, even if the supplementary examination is for the same class, the fact remains that a candidates who appears in supplementary examination and pass through the same is certainly at a lower pedestal compared as to those candidates who clear the main examination. A candidate who makes up his percentage by appearing in the supplementary examination cannot be equated with the candidates who pass in the main examination who are certainly a foot higher and, therefore, the grievance as has been raised on behalf of the appellant is only illusory and cannot be treated to be a real legitimate grievance. In this context, it is clear that the earlier decision which was rendered by this Court in Special Civil Application Nos.5090 and 5968 of 1999 decided on 27/8/1999 could not be cited as a precedent or authority so as to allow their petitions and the learned single

Judge has rightly held that in the Year 1999, the petitioners of those petitions i.e. Special Civil Application Nos.5090 and 5968 of 1999 had applied within time were in the declared category of eligibility for 1999-2000 and were registered in the qualified category and yet their case had not been considered and, therefore, the Court had intervened. This decision could not be applied to the facts of the present case in the light of the factual position and condition incorporated for this year of 2000-2001. Yet, we had left it open on 17.10.2000 for the respondents Nos.1 to 3 to consider as to whether the present appellant or the other similarly situated candidates could be accommodated on the same lines as the petitioners in Special Civil Applications Nos.5090 and 5968 of 1999 decided on 27/8/1999. However, we have been told by Ms.Harsha Devani, learned AGP that the appellant could not been granted admission for the Year 2000-2001.

5. The argument that the Board had issued a Circular to the effect that the cases of the students who pass in the supplementary examination will be considered for admission to different professional courses and, therefore, the appellant's application should be entertained has rightly been rejected by the learned single Judge. So far as the Board is concerned it is a different body all together and it cannot govern the admissions in professional courses undertook by the Central Degree Admission Cell and Directorate of Technical Education under the State of Gujarat for that purpose and no such statement made by the Board can bound, the State of Gujarat and the Central Degree Admission Cell and the Directorate Technical Education.

The case of Ashok Kumar Sharma and others v/s. Chander Shekhar and another, reported in (1997) 4 Supreme Court Cases 18 was under Service Law. It was held that in the process of recruitment, the advertisement issued inviting applications requiring the qualification to be possessed on the date of submission of the application, permitting the candidates who did not fulfil that requirement but acquired the requisite qualification later albeit before the holding of interview cannot be entertained. It was held in clear terms that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date alone. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. The case of

Harpal Kaur Chahal (SMT) v/s. Director, Punjab Instructions, Punjab and another, reported in 1995 Supp (4) Supreme Court Cases 706 was also for an appointment. The eligibility was to be determined on the material date for determining i.e. the last date fixed for receipt of applications and it was also held that the candidate not possessing the requisite qualification on that date, although acquiring the same by the date of selection was nonetheless ineligible and held to be ineligible. In case of Council of Homeopathic System of Medicine, Punjab and others v/s. Suchintan and others, reported in 1993 Supp. (3) Supreme Court Cases 99, in para-17 thereof it was observed that the word "Supplementary" denotes supplementing to or in continuation of the annual examination and, therefore, provisional admission is given for the second year DHMS course, the failure to complete the first DHMS examination should not be put against the respondents. If the regulations are so literally interpreted that will lead to absurdity and will run counter to the object of providing a supplementary examination and that such interpretation is holding the filed for a long time and that is why in Jaininder Mohan v. Council of Homeopathic System of Medicine, Punjab (ILR [1992] 1 Panjab 159) the Court took a view that passing in the supplementary examination will relate back to the date of annual examination. Otherwise, as rightly pointed out by the Court anomalous results would follow which cannot be of any help to the appellant for the purpose of admission to the professional courses. In the aforesaid case of Council of Homeopathic System of Medicine, Punjab and others v/s. Suchintan and others (Supra), the question was for the admission to the next year of the same integrated course and not a new and different course altogether. This case, therefore, does not help the appellant in the facts of the case on hand. We have already made clear that it was open to candidates like the appellant to choose and pursue other regular courses which may be available to them, but cannot enforce their claim for the purpose of pursuing the fresh and new professional courses for which they have qualified at a point of time after the expiry of the last date. Such candidates can save their academic year by pursuing any other course as may be available them.

5. For the aforesaid reasons, we agree with the view taken by the learned single Judge. We do not find any error of fact or law so as the interfere with the order passed by the learned single Judge. There is no force in this appeal, the same is hereby dismissed. No order as to costs.

In view of the order passed in the main appeal, no orders are required to be passed in the Civil Application for stay. The same stands rejected accordingly. Rule is discharged.

(M.R.Calla,J.)

(Ravi R. Tripathi,J.)

(vrp)